IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 375 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRLOSKAR PNEUMATIC CO.LTD.

Versus

ROHINI FABRICATORS LTD.

Appearance:

1. Civil Revision Application No. 375 of 2000

MR MANISH R BHATT for Petitioner No. 1

MR PT CHACKO for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr.M.R.Bhatt for the

petitioner and learned Advocate Mr.Kinariwala for the respondents. This is a Revision Application filed against an order passed by learned City Civil Judge, Court No.9, Ahmedabad, on 23rd of February, 2000, below Civil Misc. Application No.932 of 1999 came to be filed by the present petitioner in Summary Suit No.5262 of 1998.

2. Brief facts of the case are as under :

That the present respondent preferred the above Summary Suit No.5262/98 for the recovery of amount of Rs. 8,54,364/- plus interest against present petitioner original defendant and summons of said Summary Suit came to be served upon the present petitioner at Pune Office on 9th of August, 1999. To this extent, the facts are admitted between the parties. Now, according to the present petitioner, the summons and suit papers were sent to their Ahmedabad Office on 12.8.1999, but however, the same were lost in transit. In the meantime, in Summary Suit No.5262 of 1998, an ex parte decree came to be passed against the defendant in failure of their appearance within 10 days as prescribed by the Rules and Order 37 of the Civil Procedure Code. This fact came in the knowledge of the present petitioner - defendant on 24.9.1999, though it was not pleaded, but according to learned Advocate for the petitioner, through the Bailiff of Pune Court because the said decree came to be transferred to Pune Court for execution. So, thereafter, the Misc. Civil Application No.932/99 came to be filed for setting aside the ex parte decree in terms of Order 37 Rule-4 of the Civil Procedure Code and for condonation of delay, if any, in preferring this Application.

3. The Application was hotly contested in the Court below and ultimately learned City Civil Judge came to the conclusion that the petitioner failed to show special circumstances to set aside the decree, and application came to be rejected vide order impugned in this Revision Application.

4. The fact which is required to be taken into consideration at this stage is the present respondent filed Civil Application No. 9669 of 2000 and on 22nd of March, 2001, this Court passed the following order :

"Heard the learned advocates.

Pending the revision application, the applicant shall be at liberty to withdraw the sum of Rs. 4,50,000/- deposited with the trial court on

condition that he shall furnish security to the satisfaction of the trial court and on giving an undertaking to this court to the effect that on the revision petitioner succeeding in the revision application No. 375 of 2000 and the ex parte decree being set aside, the applicant shall redeposit the said amount of Rs. 4,50,000/- with the trial court within the time that may be stipulated by this Court. The undertaking shall be given within ten days from today. Copy of the undertaking shall be furnished to the opponent also. Civil Application stands disposed of in the above terms."

5. Now, in the view of above, though this Revision Application is also contested by the respondent, it appears that it is not necessary to go into the merits of the case so as to decide the issues between the parties. In view of the above order passed by this Court on 22.3.2001 and since the Summary Suit itself is of 1998 (Summary Suit No. 5262/98) on the contrary, in the special circumstances, it would be just and proper to direct the City Civil Court to try the above said Summary Suit No.5262/98 as a long cause suit according to law after setting aside the order impugned. The interim order passed on 22.3.2001 is required to be made absolute till the disposal of the said long cause suit.

6. In this view of the matter, this Revision Application is allowed. The order passed by learned City Civil Court, Curt No.9, Ahmedabad, on 23.2.2000 in Civil Misc. Application No.932/99 is set aside and the said Application is allowed to the extent that the ex parte decree passed in the Summary Suit No.5262/98 on 24.9.1999 is set aside, and the said Summary Suit is directed to be treated as a long cause suit. It is further directed that the said Summary Suit No.5262/98 be tried as long cause suit and be disposed of according to law as early as possible. The order passed by this Court on 22.3.2001 in Civil Application No.9669 of 2000 is made absolute till the final disposal of the said long cause suit. Rule made absolute to the above extent. No order as to costs.

(J.R. Vora, J.)

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